

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Review)	
)	
New Haven Adult Education Center)	File No. SLD-330527
New Haven, Connecticut)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: May 14, 2004

Released: May 18, 2004

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1 The Telecommunications Access Policy Division has under consideration a Request for Review filed by New Haven Adult Education Center, New Haven, Connecticut (New Haven).¹ New Haven seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). SLD denied New Haven's Funding Year 2002 application for discounted services under the schools and libraries universal service mechanism on the grounds that the recipient, an adult education center, is an ineligible entity under program rules.² For the reasons set forth below, we find that New Haven does not satisfy the statutory definition of schools that are eligible for discounts. We therefore deny its Request for Review

2 Only eligible schools and libraries may receive universal service funds under the schools and libraries universal service mechanism.³ To be eligible, a school must, among other

¹ Letter from Vincent Del Prete, New Haven Adult Education Center, to Federal Communications Commission, filed August 29, 2002 (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company may seek review from the Commission. 47 C.F.R. 54.719(c).

² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Vincent Del Prete, New Haven Adult Education Center, dated July 2, 2002.

³ 47 C.F.R. § 54.501. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9066, para. 552 (1997) (*Universal Service Order*), as corrected by Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Errata, 12 FCC Rcd 8776 (1997), *affirmed in part*, Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (2000).

things, meet the statutory definition of "elementary school" or "secondary school" contained in the Elementary and Secondary Education Act of 1965 (Education Act), as amended in the No Child Left Behind Act of 2001 (No Child Left Behind Act).⁴ Under the No Child Left Behind Act, an "[e]lementary school" is defined as "a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law."⁵ A "[s]econdary school" is defined as "a nonprofit institutional day or residential school, including a public elementary charter school, that provides secondary education, as determined under State law, except that such term does not include any education beyond grade 12."⁶

3. In Funding Year 2002, New Haven filed an application with SLD for discounted telecommunications and Internet access services.⁷ SLD denied the application, finding that a significant portion of each funding request was for an entity not eligible to receive funding.⁸ New Haven appealed to SLD, asserting that it is part of the New Haven Public School District in New Haven, Connecticut and is therefore eligible to receive E-Rate support.⁹ SLD denied the appeal.¹⁰ Specifically, SLD found that adult education centers are not eligible entities in the State of Connecticut and may not receive discounts.¹¹ New Haven then filed the instant Request for Review.

4. In its Request for Review, New Haven argues that, contrary to SLD's determination, it is eligible to receive E-Rate discounts because it satisfies the definition of "secondary school" applicable to the schools and libraries program.¹² In particular, New Haven argues that, as part of the New Haven Public School System, it provides high school credit and general education programs in which students may earn their high school diplomas.¹³ New

⁴ 47 U.S.C. §§ 254(h)(4), 254(h)(7)(A) as amended, The No Child Left Behind Act, Pub. L. 107-110, § 901, 115 Stat. 1425, 1956 (Jan. 8, 2002) (codified at 20 U.S.C. §§ 7801 (18), (38)), Pub. L. 106-554, § 1606(a), 114 Stat. 2763, 2763A-334 (Dec. 21, 2000) (redesignating paragraphs (15) through (29) as paragraphs (16) through (30), respectively, Charter School Expansion Act of 1998, Pub. L. 1-5-278, § 3(j), 112 Stat. 2688 (Oct. 22, 1998).

⁵ 20 U.S.C. § 7801(18).

⁶ 20 U.S.C. § 7801(38).

⁷ FCC Form 471, New Haven Adult Education, New Haven Connecticut, filed January 17, 2002.

⁸ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Vincent Del Prete, New Haven Education, dated May 21, 2002.

⁹ Letter from Vincent Del Prete, New Haven Adult Education Center, to Schools and Libraries Division, Universal Service Administrative Company, filed May 28, 2002.

¹⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Vincent Del Prete, New Haven Education, dated July 1, 2002.

¹¹ *Id.*

¹² Request for Review.

¹³ *Id.* New Haven provides a statement from the New Haven Board of Education stating that New Haven is part of the New Haven K-12 Public School System.

Haven asserts that it also provides enrichment courses for students who have already earned their high school diplomas, as well as English proficiency courses for students who speak other languages.¹⁴ In addition, New Haven asserts that adult education in the State of Connecticut is governed and supervised by the local Boards of Education and therefore should be eligible for all financial support.¹⁵

5. We first address New Haven's claim that it qualifies as a "secondary school" under the Education Act, as amended in the No Child Left Behind Act. Our review of the record reveals that New Haven does not provide "secondary education," as defined under the Education Act, as amended, because New Haven's curriculum includes education beyond grade 12. Although New Haven's high school diploma and general education programs provide classes at the secondary education level, New Haven also offers enrichment education courses, such as advanced computer courses and Nurses Assistant certification, for students who already have a high school diploma, a G.E.D., or a college degree.¹⁶ The fact that these prerequisites are required for the enrichment program confirms that New Haven's curriculum includes education beyond grade 12.

6. Moreover, we note that the Connecticut Code does not define the terms "secondary school" or "secondary education."¹⁷ Pursuant to section 10-67(1) of the Connecticut Code, the term "school" is defined as "a public school," which is "any day school conducted under the orders and superintendence of a duly elected school committee, a board of education, [or] the State Board of Education ..."¹⁸ After reviewing the applicable law and the underlying record, we find that New Haven fails to meet this standard as well. In particular, we conclude that New Haven is not a "school," as defined in the Connecticut Code, because it is not a day school. In fact, New Haven provides adult education during the day and evening.¹⁹

7. Finally, we disagree with New Haven's argument that adult education in the State of Connecticut should be eligible for financial support because it is governed by the local Boards of Education.²⁰ Similarly, we are not persuaded by the argument that New Haven's affiliation

¹⁴ Request for Review

¹⁵ *Id*

¹⁶ See <<http://www.gwctc.commnet.edu/newhavenadulted/html/enrichment.htm>>

¹⁷ As noted above, the Education Act, as amended, looks to the applicable State law to determine which institutions qualify as elementary and secondary schools. See *supra*, para. 2. The New Haven Public School System and its educational institutions are authorized by and operate pursuant to provisions of the Connecticut General Statutes Annotated (Connecticut Code)

¹⁸ See C.G.S.A. § 10-154(a)(1) (definition of "school"); C.G.S.A. § 10-183(b) (definition of "public school").

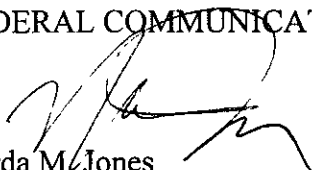
¹⁹ See C.G.S.A. §§ 10-154(a)(1), 10-183(b). An "adult" is "any person sixteen years of age or over who is not enrolled in a public elementary or secondary school program or a student enrolled in school who was assigned to a class primarily designed for adults." C.G.S.A. § 10-67(1)

²⁰ New Haven refers to section 10-4(a) of the Connecticut Code, which provides that the "Board [of Education] shall have general supervision and control of the educational interests of the state, including preschool, elementary and secondary education, special education, vocational education and adult education. See C.G.S.A. § 10-4(a).

with the New Haven Public School System makes it a "school" for purposes of program eligibility. As discussed above, only educational entities meeting the statutory definition of "elementary school" or "secondary school" are eligible for discounts. New Haven does not satisfy either definition. We do not doubt that the existence of New Haven results in an improved educational experience for adult students in New Haven, Connecticut. However, the provision of discounted services for entities such as adult education centers is beyond the scope of our statutory authority and would divert support from the program's intended beneficiaries.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by New Haven Adult Education Center on August 29, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Narda M. Jones
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